**THE HONOURABLE SRI JUSTICE GODA RAGHURAM**

**WRIT PETTION NO.16328 OF 2006**

**BETWEEN:**

Rohini Enterprises, rep. by its proprietor B.Prabhakar Reddym and others.

…Petitioners

vs.

The Commissioner of Endowments Hyderabad and another

..Respondents

**THE HONOURABLE SRI JUSTICE GODA RAGHURAM**

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**ORAL ORDER**

The petitioners seek a declaration that the action of the 1st respondent-the Commissioner of Endowments in rejecting the highest respective bids for grant of leasehold rights of the lands belonging to the 3rd respondent-Devasthanam, without recording reasons as required under the rules issued in G.O.Ms.No.866 dated.08-08-2003 is illegal. They also seek a direction to the 3rd respondent not to conduct a fresh auction and to grant leasehold rights to the petitioners to pursue mining operations in the lands of the Devasthanam pursuant to the earlier auction conducted on 08-04-2006.

The 3rd respondent-Devastanam has vast extents of lands in Bellamkonda Mandal, Guntur District which are not fit for cultivation but are useful for mining operations. The petitioners claim to be pursuing mining operations in some of the lands of the 3rd respondent-Devastanam since long. Earlier, the petitioners contend, the respondents were extending leases year to year by private negotiation but in the previous year, the 3rd respondent decided to pursue the auction mode for grant of leasehold rights of the Devastanam.

For grant of leases for several extents of lands of the Devastanam for the period from 01-02-2006 to 31-01-2009, the auction was scheduled on 26-12-2005. The auction could not take place as there were insufficient bids. The auction process was therefore

adjourned to 09-01-2006 and thereafter to 13-03-2006. It was further postponed and was eventually conducted on 08-04-2006. According to the petitioners 23 persons paid the E.M.D and auction was conducted in respect of 30 plots. With regard to 14 of the plots bidders participated and the auction in respect of other 16 was further postponed for want of competitive bidding. The petitioners claim to have participated in the public auction for the several extents mentioned in page No.4. All of them claim to have paid the E.M.D as stipulated; and to have become the highest bidders for the respective plots. They assert to have deposited half of the bid amount on completion of the auction. They also assert to have paid the rent for the full year and have obtained receipts from the 3rd respondent-Devastanam.

The grant of leases of these lands of the 3rd respondent-Devastanam are governed by the statutory rules known as A.P. Charitable and Hindu Religious Institutions and Endowments Immovable Properties and other Rights (other than the agricultural land) Leases and Licences Rules,2003 (for short "the Rules"). The 3rd respondent is a Hindu Religious Institution classified as a Sec.6(b) Institution. Therefore the 2nd respondent is the competent authority to either confirm or reject grant of leases of the Devastanam lands in view of the provisions of Rule.12(1) of the Rules. According to the table annexed to Rule.12 of these Rules, in respect of institutions and endowments published under Sec.6(b) of the Act the competent authority to confirm or reject the leases or licence, is the Deputy Commissioner if the value does not exceed to Rs.30,000/- and the Additional Commissioner if the value is between Rs.50,000/- to Rs.1 lakh. In any event except where the value exceeds Rs.1 lakh in respect of all other leases the competent authority's (to confirm or reject a lease) range from the Deputy Commissioner to the Additional

Commissioner. The petitioners on the basis of this statutory position contend that the 1st respondent-Commissioner is not competent to reject the bids of the petitioners, which have been recommended by the 3rd respondent for acceptance. They also contend that the 3rd respondent had acted illegally in sending up the bids for confirmation or otherwise to the 1st respondent instead of to the 2nd respondent.

By a proceedings dated.18-07-2006 the 3rd respondent informed the petitioners that the 1st respondent by his communication dated.16-06-2006 had rejected the auction held on 08-04-2006 and therefore the deposits made by the petitioners would be returned to them and that the auction for grant of quarry lease would be held at a subsequent notified date. It is this communication of the 3rd respondent, which is impeached in the writ petition *inter alia* on the grounds adverted to above.

Two counter-affidavits are on record. One is by the Manager of the 3rd respondent-Devastanam and the other by the 1st respondent-Commissioner. To the extent relevant and material for the purposes of this *lis,* the counter-affidavit filed on behalf of the 3rd respondent asserts that the 2nd respondent had reported that he was not fully satisfied with the bids secured in the auction held on 08-04-2006 despite the Manager of the 3rd respondent-Devastanam and the Supervising Officer having reported that the bids secured were fair and considerable; and the 2nd respondent requested the 1st respondent to issue appropriate orders in the circumstances submitted by the 2nd respondent in respect of Plot Nos.2,5,8,9,14,16,17,19,23 and 29; and not to confirm the lease in respect of plot Nos.3,10,12 and 15 in favour of the highest bidders as the latter are covered by the High Court Orders. The sum and substance of the counter-affidavit of the Manager is that as the Commissioner is directed cancellation of the

auction held on 08-04-2006, the impugned notice was issued to the petitioners.

The 1st respondent's counter sets out the various earlier events, circumstances and proceedings leading to the auction held on 08-04-2006, the inadequate bids received at the earlier auction attempts and the reasons why the auction was postponed from time to time. The 1st respondent states that the 3rd respondent had conducted the public auction eventually on 08-04-2006 as a consequence of which 14 of the plots were successfully put to auction and in the table set out in page No.4 of the counter-affidavit the particulars and the details of the properties, the extents, the annual lease amounts that were bid, the lease period and the names of the highest bidder, at the auction held on 08-04-2006 have been set out. As is apparent from the 1st respondent's counter-affidavit the petitioners were the highest bidders in respect of the plots they bid for. The 1st respondent's counter-affidavit proceeds to state that the 2nd respondent had reported that he was not fully satisfied with the bids secured in the auction held on 08-04-2006 and requested the answering respondent to issue appropriate orders in the circumstances, in respect of Plot Nos.2,5,8,9,14,16,17,19,23,29 and not to confirm the leases in respect of plot Nos.3,10,12,15 as the latter are covered by High Court orders. Having stated this, the 1st respondent admits that as the temple, is one that falls under Sec.6(b), the competent authority is the Deputy Commissioner except in the case of serial No.9 of the table set out in page No.4 where the annual lease amount of Rs.77,000/- was highest bid in respect of Ac.15.00 of land and this bid was by the 4th petitioner. In respect of this extent, having regard to the annual lease amount the competent authority is the Additional Commissioner in view of the authorities specified in the

table appended to Rule.12 of the Rules. In any event either the 2nd respondent in the generality of the cases or the Additional Commissioner in respect of item No.9 (Plot No.15) were the competent authorities to confirm or reject the leases and not the Commissioner. The general power of superintendence available to the Commissioner under the provisions of the Act will not avail to justify an exercise of the power of conformance or rejection of leases having regard to the clear designation of specified competent authorities under the statutory rules to which reference is already been made earlier in this judgment. Having regard to the classification of the 3rd respondent-Devastanam and the specification of the competent authority empowered and authorized to exercise the power of conformance or rejection of the leases *qua* Rule.12 of the Rules, it is the Deputy Commissioner or the Additional Commissioner (in respect of Plot No.15) who would be competent and could, on rational grounds, either confirm or reject the leases. The 1st respondent has no such authority power or jurisdiction. What is however contended by the 1st respondent and a contention that deserves to be rejected out of hand, is that lease condition No.1 stipulates that the lease is subject to the approval of the Commissioner of Endowments Department. The implication of this contention of the 1st respondent is that the statutorily conferred power, authority and jurisdiction is overridden by a lease condition. The counter-affidavit of the 3rd respondent as well as of the 1st respondent is conveniently silent as to the authority for drafting of a lease condition which usurps the power, authority and jurisdiction of the Deputy Commissioner or the Additional Commissioner conferred by the Rules and vests such power, contrary to the mandate of the statutory rules, in the Commissioner. At the hearing, the learned Government Pleader for Endowments fairly concedes the position that in view of the mandate of the statutory rules,

the incorporation of a lease condition and by the 3rd respondent or by any of the respondents for that matter, would not have the effect of eclipsing the statutory rules. This position is well accepted and the gracious concession by the learned Government Pleader is recorded, *lest* this Court would have been inclined to impose costs for the extravagant exercise of a non-existent power.

In view of the analysis above, the directive stated to have been issued by the 1st respondent by his communication dated.16-06-2006 addressed to the 3rd respondent rejecting the highest respective bids received pursuant to the pubic auction conducted on 08-04-2006 is incompetent and consequently the notice dated.18-07-2006 issued by the 3rd respondent to each of the petitioners is declared incompetent as its' foundation is the incompetent direction by the 1st respondent. The 3rd respondent is directed to forthwith and at any rate within a period of seven (7) days from the date of receipt of a copy of this Order, forward the bids received, to the 2nd respondent or any other competent authority ( having regard to the value of the subject matter) and the said competent authority shall take an expeditious decision on whether to confirm or reject the leases. Any decision by the competent authority, whether of conformance or rejection shall be communicated to the petitioners within a period of six weeks from the date of receipt of a copy of this Order. The respondents shall not conduct a public auction till the competent authority decides and communicates the decision on the highest bids received pursuant to the auction conducted on 08-04-2006. Nothing in this order shall be construed as authorizing any existing occupants of the lands in question to continue in occupation notwithstanding the fact of completion of the tenure of their leases and the respondents are at liberty to pursue appropriate steps to remove any encroachments, as authorized by law.

The writ petition is allowed to the extent indicated above. There shall be no order as to costs.

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**GODA RAGHURAM,J**

23rd OCTOBER 2006
***TSNR**